

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT PARKERSBURG**

DENNA MARIE LOTT,

Plaintiff,

v.

Case No. 6:12-cv-00639

**MICHAEL J. ASTRUE,
Commissioner of Social
Security,**

Defendant.

PROPOSED FINDINGS AND RECOMMENDATION

This case was referred to this United States Magistrate Judge by standing order to consider the pleadings and evidence, and to submit proposed findings of fact and recommendation for disposition, all pursuant to 28 U.S.C. § 636(b)(1)(B).

The plaintiff filed this action on March 2, 2012, naming the “Appeals Council” as the defendant and identifying her attorney as Jan Dils. The court contacted Jan Dils, who indicated that while she had represented the plaintiff before the Social Security Administration (“SSA”) in an attempt to obtain disability insurance benefits (“DIB”) and supplemental security income (“SSI”), under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-433, 1381-1383f, by decision dated May 4, 2011, those applications were denied, the decision is now final at the administrative level, and she was not representing the plaintiff in any appeal to federal court. Ms. Dils’s office provided the decision of the Administrative Law Judge and the decision of the Appeals Council, which denied the plaintiff’s request for review on January 12, 2012. (Court’s Exhibits A and B.) On March 7, 2012, the undersigned wrote the plaintiff, informing her that the document she

filed does not meet the requirements for appealing an adverse decision by the SSA. (Court's Exhibit C.) The undersigned enclosed a Complaint and Application to Proceed without Prepayment of Fees and Costs and encouraged the plaintiff to return them at her earliest convenience to the Clerk's Office. The undersigned warned the plaintiff that if she did not file these documents, she risked dismissal of her case. The court attempted to contact the plaintiff by telephone without success. To date, the plaintiff has not complied with the requirements for filing a social security appeal.

Based on the above, it is respectfully RECOMMENDED that the presiding District Judge dismiss this matter for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. See also Link v. Wabash Railroad Co., 370 U.S. 626, 630-33 (1962) (finding a court has the authority, pursuant to Rule 41(b), to dismiss a case sua sponte for lack of prosecution without notice of its intention to do so or providing an adversary hearing before acting). It is further respectfully RECOMMENDED that the presiding District Judge dismiss this matter without prejudice.

NOTICE

The parties are notified that this Proposed Findings and Recommendation is hereby FILED, and a copy will be submitted to the Honorable Thomas E. Johnston. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections) and then three days (mailing/service) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection.


Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363, 1366 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 155 (1985); Wright v. Collins, 766 F.2d 841, 846 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91, 94 (4th Cir. 1984). Copies of such objections shall be served on opposing parties and Judge Johnston.

The Clerk is directed to file this Proposed Findings and Recommendation and to transmit the same to counsel of record and to mail a copy to the plaintiff.

March 27, 2012

Date


Mary E. Stanley
United States Magistrate Judge